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Summary record of the 25th meeting
Held at Headquarters, New York, on Friday, 21 October 2016, at 10 a.m.

Chair: Ms. Mejía Vélez ..... (Colombia)

Contents

Address by the President of the General Assembly

Agenda item 68: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

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The meeting was called to order at 10.15 a.m.

Address by the President of the General Assembly

1. **Mr. Thomson** (Fiji), President of the General Assembly, said that many people worldwide continued to be subject to daily violations of their human rights. The scale of events in Syria, which were having a devastating impact on the Syrian people and their country with regional and global reverberations, had been the subject of a recent informal General Assembly briefing.

2. The unfolding humanitarian and refugee crisis was on a scale that had not been seen since the Second World War, and included entire communities that were being forcibly displaced by climate change and natural disasters. As the situation was expected to deteriorate further, the impact of climate change on people must be examined as a human rights concern, as well as a security, development and environmental issue. The adoption of the New York Declaration for Refugees and Migrants was an important step, and his office would place priority on its follow-up.

3. The work of the Third Committee was fundamental to upholding existing human rights standards, protecting the human rights of all individuals, and ensuring that the human rights dimensions of new and emerging challenges were elevated and understood. The growing collaboration between human rights experts in New York and Geneva was to be commended.

4. The 2030 Agenda for Sustainable Development was critical to realizing the human rights of all people, and achievement of the Sustainable Development Goals would require the promotion and protection of those rights. The 2030 Agenda must be implemented in line with the United Nations Charter, international treaties and international law for it to be effective. To that end, people around the world must be aware of their human rights, understand the impact of human rights on their lives, and be empowered to ensure the promotion and protection of those rights within their communities and with authorities.

5. At the seventieth session, a considerable amount of work had been undertaken to align the agenda of the General Assembly with the 2030 Agenda. It aimed to ensure that the work of the General Assembly, as well as of the Economic and Social Council, contributed to the effective and efficient implementation of the relevant frameworks. The guidance and proposals of Member States were welcomed in that regard.

Agenda item 68: Promotion and protection of human rights (*continued*) (A/71/40 and A/C.3/71/4)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/71/56, A/71/254, A/71/255, A/71/269, A/71/271, A/71/273, A/71/278, A/71/279, A/71/280, A/71/281, A/71/282, A/71/284, A/71/285, A/71/286, A/71/287, A/71/291, A/71/299, A/71/302, A/71/303, A/71/304, A/71/305, A/71/310, A/71/314, A/71/317, A/71/319, A/71/332, A/71/344, A/71/344/Corr.1, A/71/348, A/71/358, A/71/367, A/71/368, A/71/369, A/71/372, A/71/373, A/71/384, A/71/385, A/71/405 and A/C.3/71/5)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/71/379-S/2016/788, A/71/540-S/2016/839, A/71/308, A/71/361, A/71/374, A/71/394, A/71/402, A/71/418, A/71/439, A/71/554 and A/C.3/71/5)

6. **Mr. Hernández Valencia** (Office of the High Commissioner for Human Rights), introducing the report on the independence of judges and lawyers (A/71/348) on behalf of Ms. Pinto, the Special Rapporteur on the independence of judges and lawyers, said that, since the Special Rapporteur had taken up her mandate, there had been a worrying number of attacks against lawyers and instances of interference with or restrictions to the free and independent exercise of their profession. A fair and effective system for the administration of justice presupposed an independent and impartial judiciary, as well as an independent legal profession. Lawyers played an essential role in democratic societies governed by the rule of law by helping to ensure access to justice and enforce and protect human rights.

7. Access to legal advice and assistance provided by an independent counsel was an important safeguard that helped to ensure fairness and public trust in the administration of justice. Lawyers should be free from

external pressure, and States were therefore under the obligation to protect them from any undue interference from authorities or non-State actors. When defending the human rights and fundamental freedoms of their clients, lawyers should be protected under the Declaration on Human Rights Defenders. To ensure the integrity of the legal profession, they should also act in accordance with professional codes of ethics and avoid compromising their independence or professional standards to please third parties.

8. Lawyers had suffered disbarment, attacks to their physical integrity and reputation, arbitrary detention, prosecution and other sanctions due to identification with their client or the cause that they had committed to defend and represent before judicial authorities. For instance, lawyers who represented and defended people charged under counter-terrorism laws were commonly stigmatized by authorities and the general public, or subjected to defamatory remarks in the media and social networks. Such attacks occurred even in countries where lawyers were generally not at risk.

9. Lawyers and their clients, as well as the lawyer's place of work and personal residence, should be protected from the illegal search and seizure of physical and electronic documents. Furthermore, undue interference with a lawyer's freedom of movement could adversely impact the ability to consult their clients, appear before courts and travel to meetings and events, thereby hindering the effective discharge of their professional functions. In certain countries, travel bans, sometimes followed by detention, made it nearly impossible for lawyers to carry out their work. Lawyers representing their clients before regional and international human rights courts and bodies should be awarded the same protections and guarantees as lawyers litigating in local tribunals, regardless of whether they were members of their national bar associations. Activities not directly related to the defence of clients or clients' causes, such as academic research and participation in legislative drafting processes, should likewise be protected from undue limitations or censorship. Contempt of court should not be used to hinder criticism of judicial organs in a democratic context.

10. Like her predecessors, the Special Rapporteur had received a large number of complaints alleging physical attacks against lawyers, as well as harassment, intimidation and threats to their physical integrity from State and non-State actors. International human rights law required States to take measures to address past injuries suffered by lawyers. They must respond appropriately to observed patterns of violence against lawyers by adopting urgent measures to protect lawyers, provide them with effective remedies and prevent further attacks.

11. Lawyers were particularly vulnerable to attacks and restrictions on their independence, especially from State authorities, in countries that had no independent bar associations. In places where bar associations were State-controlled, lawyers were often targeted by those organizations with groundless or arbitrary suspensions to practice or disbarment, frequently alongside further restrictions such as arbitrary detention and prosecution. Silencing or controlling bar associations eroded the rule of law and the possibility for people to realize their human rights.

12. In order to protect the independence of the legal profession, a fair and independent system for considering disciplinary proceedings for alleged violations of professional ethical rules should be established. Disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer. Unfortunately, in many countries, lawyers were threatened with disbarment in order to undermine their independence or intimidate them to prevent the discharge of their professional duties. Threats often constituted an act of reprisal for activities lawyers carried out in the legitimate exercise of their professional responsibilities.

13. The Special Rapporteur was seriously concerned about the many States where the independence of lawyers was not fully protected in law, or where domestic legal guarantees were not adequately implemented and enforced. Domestic guarantees for the independence of the legal profession were often manipulated or curtailed by restrictive legislation, such as counter-terrorism or surveillance laws. Member States must take urgent measures to respect and protect the independence and rights of lawyers.

14. **Ms. Callamard** (Special Rapporteur on extrajudicial, summary or arbitrary executions),

introducing the report of **Mr. Heyns**, the outgoing Special Rapporteur, (A/71/372), said that, as she had taken up her mandate in August 2016, the report reflected the views of her predecessor.

15. The outgoing Special Rapporteur had spearheaded normative developments in response to emerging issues and worked to strengthen existing guidelines, such as the adoption of a general comment on the right to life by the African Commission on Human and Peoples' Rights, the development of a similar comment by the Human Rights Committee, and the updating of the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol). In collaboration with the Office of the High Commissioner for Human Rights, the Special Rapporteur had consulted extensively with experts and Member States, resulting in a final updated document issued in July 2016.

16. The emerging body of scholarship indicated a longstanding trend towards a decline in interpersonal violence, suggesting that it was not as endemic or intractable as had been thought. Creative solutions could be found to protect the right to life, including through technology. It remained important to use statistics, particularly for documenting homicides, and share them with the appropriate monitoring bodies in view of global commitments to reduce violence.

17. It was regrettable that a small number of States continued to flout international standards on the death penalty, which could no longer be regarded as compatible with the prohibition of cruel, inhuman or degrading treatment. States should implement a moratorium on the death penalty, or, failing that, execute fewer people year by year and reduce the number of offences for which the death penalty could be imposed. Technical assistance provided for combating drug crime should assert that the imposition of the death penalty for drug offences was a flagrant violation of international law. States must also be fully transparent in their use of the death penalty.

18. The intentional use of lethal force by law enforcement officials was only permissible in exceptional cases, and precaution should be a separate requirement for the use of force. For example, taking precautionary steps when managing public demonstrations reduced the risk of confrontation. In some cases, reduced use of firearms could potentially save lives. Precaution required States to equip their law enforcement officials with appropriate less-lethal weapons, although almost any use of force against individuals could cause loss of life or serious injury.

19. Regarding technology, the use of armed drones and fully autonomous weapons in armed conflict and law enforcement had led to a depersonalization of the use of force with consequences for prevention and accountability. The use of drones in a context where international human rights law was the applicable legal regime could only be justified if it was necessary in order to save lives from a truly imminent threat. Transparency in the legal and factual ramifications of drone use could guard against the risks posed. In general, the use of military-style weapons in law enforcement should be questioned as it implied that citizens were seen as a threat.

20. It was unclear whether autonomous weapons, which could select and engage targets without human intervention, could carry out lawful targeting and whether they should be permitted to target human beings. Could they make the necessary distinctions and proportionality judgements required to ensure protection of the right to life, and where would individual accountability lie when killing was carried out according to an algorithm? In order not to be arbitrary, the deprivation of life could require a deliberative human decision, and killing by machine could thus inherently violate the right to life. Consequently, there should be a moratorium on the development of autonomous weapons and weapons without meaningful human control should be banned.

21. States had failed to address systematic patterns of violence, including killings motivated by discriminatory prejudice. Increased attention to violence against journalists and human rights defenders had not yet significantly improved their safety. States had a responsibility to investigate individual cases of witchcraft-related killings and to actively discourage them, potentially through increasing sentencing and addressing underlying beliefs. With regard to honour killings, the Special Rapporteur could monitor incidents where the State either supported or approved of such killings, or extended a form of impunity to the perpetrators. There must also be greater accountability in cases of killings on the basis of gender or sexual identity. Moreover, instances where a deliberate policy

had impeded the flow of migrants or refugees, particularly when it denied them asylum and placed them in mortal danger, appeared to amount to a violation of the right to life.

22. Vulnerable groups must be given increased attention and patterns of discrimination in the use of force by law enforcement officials should be studied. The impact of terrorism on the right to life remained of concern, both because of State overreactions and because of the threats posed by terrorists themselves. The largely underexplored use of force by non-State actors should be addressed, while the Minnesota Protocol should be made accessible and known to the full range of persons and entities engaged in investigations.

23. **Mr. Ceballos** (Cuba) said that his delegation was interested in the proposal to study patterns of discrimination in the use of force by law enforcement and their impact on the protection of the right to life.

24. **Ms. Ali** (Singapore) said that the lawful imposition of the death penalty was fundamentally different to extrajudicial, summary or arbitrary executions, which Singapore strongly condemned. In his report, the previous Special Rapporteur had made several flawed claims regarding the death penalty, espousing the view that international law required its progressive abolition and prohibited its imposition for drug offences. Capital punishment remained legal under international law; drug offences were considered most serious crimes in Singapore and therefore met the threshold for the death penalty, which had been instrumental in keeping the country drug-free. She called on the Special Rapporteur to address the issue more effectively, and hoped that future reports would not make such fallacious assertions.

25. **Ms. Wilson** (Australia) said that her country reiterated its opposition to the death penalty, and urged the introduction of an immediate moratorium by States resuming or planning to resume its imposition. Australia remained deeply concerned at the failure of some States to protect persons from violence on the basis of their sexual orientation, gender identity or intersex status, congratulating the Special Rapporteur for considering that form of violence and encouraging other Special Rapporteurs to do so in the context of their mandates. She wished to know the Special Rapporteur's views on strengthening the normative framework for the protection of transgender and intersex persons.

26. **Mr. de la Mora Salcedo** (Mexico) said that the previous Special Rapporteur had presented interesting and timely questions on international humanitarian law that merited follow-up, particularly regarding autonomous weapons, the death penalty, executions by non-State actors, and the issue of migrants and refugees and the role of States in respecting their right to life.

27. **Ms. Karimdoost** (Islamic Republic of Iran) asked if additional international provisions were needed to improve the existing standards and principles for fair trials established by the International Covenant on Civil and Political Rights, and how to ensure fair trials in all situations, including those involving armed conflicts and migrants.

28. **Mr. Forax** (Observer for the European Union) said that the European Union had noted with great interest the Special Rapporteur's intention to keep the progressive abolition of the death penalty high on her agenda, and asked for information on her planned work priorities and country visits. He asked whether she would continue to highlight the killing of journalists by State or non-State actors and examine how enhanced free speech and accountability could help prevent those killings as well as for further details of how States could best utilize the Minnesota Protocol to prevent extrajudicial killings.

29. **Mr. Al-Hussaini** (Iraq) said that the previous Special Rapporteur had been unable to make a scheduled trip to Iraq for technical reasons; he invited the current Special Rapporteur to visit at her convenience.

30. **Mr. Matt** (Liechtenstein) said that the previous Special Rapporteur had argued that the imposition of the death penalty in violation of international law constituted an arbitrary deprivation of life and thus was within his mandate. He asked if the current Special Rapporteur agreed with that interpretation, and how she would continue to work on the issue. He also asked if she had engaged with the Government of the Philippines on reports of extrajudicial killings there, how she interpreted those reports, and how she had responded to them.

31. **Ms. Charrier** (France) said that neither the death penalty nor extrajudicial executions could be legitimized under the pretext of combatting terrorism or criminality. France was deeply committed to the standards of fair trial and restated its steadfast opposition to the death penalty. She urged the Special Rapporteur to continue her predecessor's work in that area. Referring to the worrying number of journalists murdered in 2015 according to the previous Rapporteur, she asked what the international community could do to effectively reduce attacks on journalists.

32. **Ms. Pritchard** (Canada) said that Canada applauded the previous Special Rapporteur's unflinching stance on killings based on sexual orientation or gender identity, including extrajudicial, summary or arbitrary executions. The report also touched on so-called "honour killings" which often went unpunished. In Canada, indigenous women faced disproportionate levels of violence, an example of multiple intersecting forms of discrimination. The Government was launching a National Inquiry into Missing and Murdered Indigenous Women and Girls. She asked what steps States should take to be more responsive to gender-related killings, and how policies could help reduce extrajudicial, summary or arbitrary executions based on sexual orientation and gender identity.

33. **Mr. Sarufa** (Papua New Guinea), referring to the mention of States flouting legislation when applying the death penalty, said that generalizations must be avoided. Under the Charter of the United Nations, countries had the sovereign right to determine their domestic policies, and the retention or application of the death penalty was a matter for each State to decide.

34. **Mr. Moussa** (Egypt) said that the lawful imposition of the death penalty was fundamentally different to extrajudicial, summary or arbitrary executions. Referring to Human Rights Council resolution 26/12, he reiterated that the Special Rapporteur was mandated to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment. No major international treaty prohibited the imposition of the death penalty, and the International Covenant on Civil and Political Rights allowed States that had not abolished the death penalty to impose it for serious violations.

35. **Ms. Mballa Eyenga** (Cameroon) said that while Cameroon strongly condemned extrajudicial, summary and arbitrary executions, the activities of special rapporteurs should not be used to promote notions or practices not accepted by certain societies and cultures and illegal under national laws. She asked the Special Rapporteur to elaborate on her priorities. She would also like to hear more about how to prevent summary and arbitrary executions by terrorists and any related recommendations.

36. **Mr. Yao** Shaojun (China) said that no international agreement prohibited the death penalty, he asked how the progressive abolition of the death penalty described in international agreements was to be achieved. The determination of serious crimes that should be subject to capital punishment was a matter for the people. The death penalty should be decided lawfully by national courts. It did not constitute extrajudicial, arbitrary or summary execution, and thus was beyond the Special Rapporteur's mandate.

37. **Ms. Rasheed** (Observer for the State of Palestine) said that Israeli occupying forces and illegal settlers were notorious for using brutal and excessive force against Palestinian civilians, including children, medics, journalists, detainees and human rights defenders with complete impunity. The previous Special Rapporteur had called for accountability for violations of human rights.. She asked how the mandate could be made more effective, particularly in the case of Palestine, so that recommendations could be implemented and Israel's longstanding violation of the right to life brought to an end.

38. **Ms. Callamard** (Special Rapporteur on extrajudicial, summary or arbitrary executions) said that there were three main challenges. First was the issue of implementation and how to ensure the effective domestication of legal and normative developments. Second, the current context was extremely complex, due in part to the increasing role of technology and the growing numbers of organized malevolent actors, who were some of the main perpetrators of large-scale killings. Third, some victims of extrajudicial, summary or arbitrary executions were less visible than others, be it at the political level or within society.

39. Based on those challenges, she had identified a number of priorities. There was a need to adopt a cross-cutting, gendered approach to addressing extrajudicial, summary or arbitrary executions, by using gender-sensitive methodology for all reports and adopting a gender-specific focus. In addition, it would be useful to explore not only the responsibilities and best practices of States in addressing violations committed by non-State actors, but also the responsibilities of non-State actors themselves, through case studies. Another focus would be improving prevention and early warning systems by exploring normative gaps. Extrajudicial executions carried out by both State and non-State actors in the context of anti-drug campaigns were another source of concern.

40. The previous Special Rapporteur had not gone beyond his mandate by addressing the issue of the death penalty. Indeed, the role of the Special Rapporteur was to examine whether the use of the death penalty amounted to an extrajudicial, summary or arbitrary execution. With regard to the assertions made by some States that defining what constituted the most serious crimes should be the responsibility of individual countries, she expressed her disagreement, noting that the entire human rights framework would be compromised if there were no universal definition.

41. **Ms. Yparraguirre** (Philippines) said that for many years her country's development efforts had been hindered by corruption, crime and the prevalence of illegal drugs. The illegal drug trade, in particular, had seriously threatened peace and order, with more than 3 million users of illegal drugs in need of rehabilitation. Determined to free the country from the manufacture, distribution and use of illegal drugs, and to save lives, the President had launched a national war on drugs in June 2016, while affirming his respect for human rights and the rule of law. The campaign was carried out with full respect for due process, and in accordance with the national Constitution and the international human rights treaties and conventions to which the Philippines was a party. There was no State policy condoning extrajudicial killings. The competent authorities were investigating the deaths that had occurred in connection with the fight against illegal drugs, and were determined to bring the perpetrators to justice. The war on illegal drugs had resulted in the confiscation of illegal drugs worth an estimated $73 million, and an unprecedented number of people voluntarily seeking rehabilitation. Lastly, the Government had extended an invitation to the Special Rapporteur on extrajudicial, summary or arbitrary executions to investigate the deaths in connection to the intensified campaign against illegal drugs.

42. **Ms. Callamard** (Special Rapporteur on extrajudicial, summary or arbitrary executions) said that she had been informed that the President's invitation had been sent on 26 September 2016, but unfortunately, she had not yet received it. In the meantime she had submitted a request to undertake a joint mission with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; they hoped to link work on the two issues, which were closely intertwined. They had also submitted a proposal to the Government of the Philippines for the convening of an expert meeting on best practices to address drug addiction, the drug trade and anti-drug campaigns, along the lines of meetings that had been held in New York. She looked forward to pursuing her mission to the Philippines.

43. **Mr. Emmerson** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that his report (A/71/384) focused on the impact on the human rights of migrants and refugees of counter-terrorism measures that frustrated States' obligations under international refugee law to provide safe haven. Highlighting key points made in the report, he said that the link between displacement of people and risks to national security in the countries in which they sought refuge had been irresponsibly and misleadingly overblown in many States, with fears of terrorism being used to stoke public fears of the refugee crisis. There was almost no evidence that terrorist groups took advantage of refugee flows to carry out acts of terrorism or that refugees were more prone to radicalisation than others; in fact refugees and migrants fleeing regions where terrorist groups were active were themselves at risk.

44. International borders were not zones of exclusion or exception with respect to States' human rights obligations. It was therefore problematic that measures aimed at preventing terrorism had become explicitly linked to the management of cross-border movement of migrants and refugees. National legislative initiatives

designed to single out suspected radicals from among the refugee population, such as the recent legislation enacted by the United Kingdom, risked falling short of the requirements of the 1951 Convention relating to the Status of Refugees.

45. International humanitarian and refugee law were based on the principle of non-refoulement. States must not under any circumstances return individuals to countries where they risked being killed, tortured or subjected to other gross human rights violations.

46. The concerns expressed about the agreement between the European Union and Turkey which provided for the blanket return of all migrants crossing from Turkey into Greece were well-founded. Migrants risked being detained or ill-treated by Turkish officials when they were returned. The General Assembly should monitor implementation of the agreement closely. Lastly, there were worrying reports that some States were detaining migrants and refugees en masse without individualized consideration, rather than using detention only when absolutely necessary. When States did resort to detaining migrants, human rights law required that the conditions of detention must be consistent with human dignity. Moreover, the detention of children was never justified; alternatives must be provided to unaccompanied migrant children and to families with children.

47. **Mr. Rabi** (Morocco) said that it was of the utmost importance to spread the message that there was no cause-effect link between movements of people and terrorism. Counter-terrorism and migration policies should be complementary, as described in paragraph 54 of the report. He asked what States could do to prevent the stigmatisation of refugees as potential terrorists.

48. **Mr. de la Mora Salcedo** (Mexico) said that in view of the potential consequences of the fight against terrorism, the international community should work preventively to strengthen institutions that promoted and protected human rights. Terrorism must not be associated with any particular religion, nationality, civilization or ethnic group, and counter-terrorism measures must be implemented fairly and not based on stereotypes.

49. **Ms. Karimdoost** (Islamic Republic of Iran) said that the right to move to another State to seek protection was the cornerstone of the international refugee protection system. However, as a consequence of the widespread perception of refugees as potential terrorists, some countries imposed undue barriers to their entry. She asked what additional action the Special Rapporteur could take under his mandate to address the problem.

50. **Ms. Moreira Costa Pittella** (Brazil) said that her delegation shared the concerns expressed about the growing perception that the movement of people constituted a threat to national security; the collection of data at borders, which violated the rights to privacy and human dignity; and the use of detention — particularly of children — to assess migration status. It was important to recognize that restrictive migration and asylum policies could in fact counteract States' efforts to combat terrorism by encouraging irregular migration and human rights violations.

51. **Ms. Biden Owens** (United States of America) said that the refugee crisis was a test of the common humanity of the international community. In the United States, the contributions of immigrants and refugees augmented those of its original inhabitants. Her Government had implemented intense screening checks in order to both welcome refugees and maintain national security. The United States was the world's largest donor of humanitarian aid and had resettled more refugees from third countries than any other nation. In line with its commitment to help those who were cast adrift and needed to rebuild their lives, her Government would welcome up to 110,000 refugees in the coming year.

52. **Mr. Al-Hussaini** (Iraq) said that his Government was carrying out its fight against terrorism with respect for human rights and the rule of law. It had conducted seminars and distributed newsletters to members of the armed forces to reinforce a human rights culture and teach the armed forces how to deal with refugees. His Government was also collaborating with United Nations agencies to promote human rights and counter terrorism, specifically through workshops for Iraqi civil servants working in the field of law enforcement. It was opening safe corridors, evacuating civilians from dangerous regions and removing landmines placed by Islamic State in Iraq and the Levant (ISIL) to allow for the safe return of civilians. He called on the international community to assist, in particular by

providing modern technology, in removing the remnants of the battles fought by Iraqi security forces, work which had a direct impact on the return of refugees and the protection of civilians.

53. **Mr. Oppenheimer** (Netherlands), explaining his country's counter-terrorism approach, said that his country sought to strike a balance between preventive and repressive measures, including sanctions, border controls and involvement of relevant actors and agencies, all while ensuring respect for human rights. Noting the importance of close international cooperation, he said that the Netherlands was the co-chair, together with Morocco, of the Global Counterterrorism Forum, a multilateral forum intended to help implement the global counter-terrorism strategy of the United Nations.

54. While the Netherlands was committed to respecting the human rights of migrants, the country also had a responsibility to protect national and international security, for instance by detecting and apprehending returning terrorist fighters, who might use the same routes as migrants. He would be interested to know the views of the Special Rapporteur on how to resolve that dilemma.

55. **Ms. Clayton** (United Kingdom) said that it was important to address the root causes and consequences of migration and provide people with opportunities to stay closer to home. There was a need to distinguish between refugees and economic migrants in order to provide proper protection for refugees and reap the economic benefits of controlled migration. Turning to the worrying phenomenon of foreign terrorist fighters, she said that accountability must be a key element of the international community's response. She asked the Special Rapporteur to elaborate on the best ways to share and build on best practices internationally and to provide practical examples of measures that had been particularly effective.

56. **Mr. Forax** (European Union) said that the European Union was firmly committed to combating terrorism and preventing violent extremism while upholding human rights, fundamental freedoms and international law, noting that not doing so would undermine the very values that the European Union was trying to protect. Indeed, ensuring security and protecting the human rights of migrants were not opposing goals, but complementary and mutually reinforcing objectives. In that connection, the right to seek asylum and the principle of non-refoulement must be respected, while counter-terrorism strategies should strike a balance between prevention, repression and protection.

57. According to the report of the Special Rapporteur, returning foreign terrorist fighters suspected of having committed war crimes or other international crimes should not only be prosecuted under counter-terrorism legislation but should also be prosecuted for war crimes. Noting that collecting and preserving evidence would be difficult in such cases, he asked what kind of mechanisms could be put in place at the national or international level to ensure that evidence for such crimes was gathered and preserved in order to hold perpetrators to account.

58. **Mr. Uğurluoğlu** (Turkey), noting that acts of terrorism violated fundamental human rights, said that Turkey sought to strike a balance between upholding fundamental rights and freedoms and ensuring public order and security. The country's long and painful fight against terrorism had taught it that terrorism could only be addressed through international solidarity and effective bilateral and multilateral cooperation.

59. Responding to the concerns raised by the Special Rapporteur on the European Union-Turkey statement of 18 March 2016, he said that Turkey had maintained an open-door policy for Syrians since 2011 and had accepted more than 2.7 million Syrians. Turkey complied strictly with the principle of non-refoulement and there had been no change in policy. In order to grant temporary protection status to Syrians taken back from the Aegean Islands, in April 2016 the relevant regulations had been amended. Turkey was determined to continue providing protection to Syrians. As for other nationalities, Turkey would act in accordance with Turkish law, which complied with European Union standards and provided sufficient legal safeguards. International protection applications lodged by irregular migrants would be dealt with on a case-by-case basis, pursuant to Turkish legislation and international law.

60. **Ms. Kirianoff Crimmins** (Switzerland) said that persons fleeing terrorism should not be stigmatized or marginalized. Upholding human rights was essential for preventing violent extremism. Countries should not use security concerns as a pretext for refusing to

provide humanitarian assistance. In that connection, it was worrying that actors working in the fields of international humanitarian law or humanitarian assistance, particularly in regions in which terrorist groups operated, risked being prosecuted.

61. According to the report of the Special Rapporteur, migration was also occurring towards areas where terrorist groups were active. The Office of the United Nations High Commissioner for Human Rights (OHCHR) was working to identify measures to counter such movements. She asked what role the United Nations could play in ensuring that such measures were in line with human rights.

62. **Mr. Emmerson** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that some States were using national security concerns as a pretext for avoiding their international obligations. Measures that restricted the movement of refugees and migrants, in breach of their rights under international law, inevitably stigmatized them and were not a lawful or effective basis for responding to security threats. The measures that posed the most serious human rights concerns were ethnic and religious profiling, disproportionate collection of biometric data and forced fingerprinting. In addition, many States had introduced stricter border controls, built fences and walls, engaged in push-back operations, criminalized irregular migration and abandoned pledges to accept refugees. Far from addressing security risks, such measures had contributed to the exponential growth of human trafficking operations.

63. Acknowledging the difficulty of collecting evidence to prosecute foreign terrorist fighters, he said that war crimes tribunals faced similar technical problems, as evidence needed to be collected on the ground or from witnesses who had left the area.

64. Preventive measures could help States to strike a balance between fulfilling their international obligations and protecting their citizens against terrorism. The Counter-Terrorism Implementation Task Force had an active programme of capacity-building, including use of advanced passenger information. The work of the Task Force was supported by OHCHR to ensure that such initiatives did not infringe the human rights of refugees and migrants.

The meeting rose at 12.30 p.m.

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Summary record of the 26th meeting
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Chair: Ms. Mejía Vélez ..... (Colombia)

Contents

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

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The meeting was called to order at 3 p.m.

Agenda item 68: Promotion and protection of human rights (*continued*) (A/71/40; A/C.3/71/4 and A/C.3/71/5)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/71/56, A/71/254, A/71/255, A/71/269, A/71/271, A/71/273, A/71/278, A/71/279, A/71/280, A/71/281, A/71/282, A/71/284, A/71/285, A/71/286, A/71/287, A/71/291, A/71/299, A/71/302, A/71/303, A/71/304, A/71/305, A/71/310, A/71/314, A/71/317, A/71/319, A/71/332, A/71/344, A/71/344/Corr.1, A/71/348, A/71/358, A/71/367, A/71/368, A/71/369, A/71/372, A/71/373, A/71/384, A/71/385 and A/71/405)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/71/308, A/71/361, A/71/374, A/71/379-S/2016/788, A/71/394, A/71/402, A/71/418, A/71/439, A/71/540-S/2016/839 and A/71/554)

1. **Mr. Forst** (Special Rapporteur on the situation of human rights defenders), introducing his report (A/71/281), said that the reported average of three environmental human rights defenders killed each week was probably a gross underestimate. Environmental defenders were being murdered, threatened, arbitrarily arrested, intimidated and harassed in growing numbers. Many were activists not by choice but as a matter of survival, and faced considerable risks in their efforts to protect the rights of their communities to the land and their ancestral way of life. Women defenders were particularly vulnerable, as they could be the target of gender-based violence, and often encountered numerous obstacles when seeking justice and reparations.

2. While murders of environmental defenders in countries such as Honduras, Brazil, Mexico and the Philippines were very much in the news, conflicts were brewing elsewhere — in Madagascar, Papua New Guinea and Cambodia, for example — and defenders came under attack even in countries such as the United States of America, South Africa, Canada and Australia. Alarmingly, most aggression against them went largely unpunished, leaving victims and their families in great distress and sending the message that some lives were less valuable than profits.

3. He was worried and appalled not only by the growing number of attacks and murders of environmental defenders but also by States' continued reluctance to act in the face of egregious human rights violations. Despite the primary responsibility of States for protecting human rights and human rights defenders, companies, their subcontractors, international development banks, local lenders and private security firms were also bound by those obligations. The media also shared in the blame when it relayed smear campaigns targeting environmental rights defenders.

4. He applauded the guidelines developed by the Working Group on business and human rights. Although some initiatives had been taken — for example, certain mining companies in Canada and Australia had recently adopted mechanisms or procedures for protecting environmental defenders — the results remained to be seen, and most such measures were largely ineffective because they were triggered by violations; what was needed was consultation and cooperation with local communities and environmental defenders from the outset. The active participation of environmental defenders in the planning and monitoring of development projects almost always ensured harmonious and sustainable development.

5. Environmental human rights defenders played a critical role in ensuring that development was sustainable, inclusive and non-discriminatory. In his report, he urged States, first, to respect the right of everyone to promote and protect a safe, healthy and sustainable environment and, second, to protect defenders from violations committed by both State and non-State actors. Besides the legal imperative, protecting human rights defenders was a matter of self-interest for States, with a view to ensuring a sustainable future. He called on all actors to adopt a zero-tolerance approach to violence against environmental human rights defenders and to launch policies and mechanisms to empower and protect them. He also called for better monitoring and documentation of the situation of defenders who were at risk, especially in countries of concern, with a view to advocating more actionable and effective measures for

their protection. The report should be read in conjunction with his 2016 report to the Human Rights Council (A/HRC/31/55) on good practices in the protection of human rights defenders.

6. During the most recent reporting period, he had received an increasing number of requests for action from various sources, including civil society, regional networks, national human rights institutions, United Nations country offices and regional organizations, and had sent nearly 200 communications to States regarding the situation of more than 340 human rights defenders. He was concerned about not only the high number of complaints that he continued to receive but also the absence or inadequacy of State responses. Since October 2015, he had carried out country visits to Hungary, Azerbaijan and Australia. With the generous support of certain Governments, he had been able to continue and expand his participation in working visits, conferences and meetings on the protection and promotion of human rights defenders around the world.

7. **Ms. Stener** (Norway) said that her country was appalled by the growing trend of violence against environmental human rights defenders. Such attacks could severely hamper the realization of economic, social and cultural rights and undermine social cohesion and, ultimately, development and stability. Empowering environmental defenders was crucial to the protection of the environment and all other related rights and, thus, the success of the 2030 Agenda for Sustainable Development.

8. As former Special Rapporteurs on the situation of human rights defenders had found, economic, social and cultural rights were among the most dangerous to defend. At the seventieth session of the General Assembly and the thirty-first session of the Human Rights Council, large majorities of the delegations had supported clear, principled and concrete calls to protect and facilitate the work of defenders of economic, cultural and social rights. The Special Rapporteur's recommendations were another such call for action. Implementing them would require the concerted efforts of State and non-State actors, including financial institutions and business enterprises. Norway urged all States to cooperate with the Special Rapporteur and all special procedures and to issue standing invitations to visit their countries.

9. **Mr. de la Mora Salcedo** (Mexico) said that his Government recognized the crucial work of human rights defenders and condemned any aggression against them. Mexico's Protection Mechanism for Human Rights Defenders and Journalists coordinated efforts to promote a safe environment for the exercise of freedom of expression across the public sector and between it and civil society. Mexico looked forward to the Special Rapporteur's visit in January 2017.

10. **Ms. Ryan** (United States of America) said that, in view of the important role played by civil society in the United Nations system, it was regrettable that over the past year human rights activists from a number of countries had either been prevented by their Governments from travelling to United Nations meetings or been subject to reprisals for their participation in such activities. Her delegation would appreciate the Special Rapporteur's views on the most critical elements for protecting human rights defenders, especially the most vulnerable among them, as well as his recommendations to regional organizations, businesses and other stakeholders with respect to promoting civic space, including reporting incidents of reprisals against those who engaged with the United Nations.

11. **Ms. Hindley** (United Kingdom) said that her delegation strongly supported the Special Rapporteur's call for a zero-tolerance approach and would be interested in his views on how such an approach should be promoted and implemented. Since many of the challenges facing human rights defenders, especially those working on environmental issues, came from business, Governments should encourage and help business enterprises to incorporate the recommendations of the Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights into their operations. She asked how government and business could best work together to support human rights defenders.

12. **Mr. Heinzer** (Switzerland) said that his delegation would be interested in the Special Rapporteur's views on the national action plans for implementing the Guiding Principles on Business and Human Rights and on how States could help businesses comply with their human rights obligations. It also wished to know how the General Assembly and the

Human Rights Council should follow up on violations against environmental rights defenders.

13. **Mr. Ruiz Blanco** (Colombia) said that his Government attached great importance to protecting human rights defenders and promoting their work, and it agreed that special attention should be paid to the most vulnerable groups, including women and lesbian, gay and transgender human rights defenders, in order to lessen the stigmatization they faced. It had developed high-level mechanisms for cooperation with civil society and the international community on implementing measures for that purpose, and it was endeavouring to strengthen human rights organizations, whose recommendations would be used to develop a comprehensive public policy on the defence of human rights and strengthening of democracy. Since 2011, the National Roundtable on Safeguards had met three times to strengthen its own structure and that of the National Protection Unit.

14. **Ms. Karimdoost** (Islamic Republic of Iran) said that State and non-State actors had a parallel duty to prevent environmental violations and respect the environment. She asked the Special Rapporteur if he considered park and forest rangers to be environmental rights defenders and, if so, how States could promote and protect their rights more effectively.

15. **Ms. Anichina** (Russian Federation) said that it was regrettable that in his report, the Special Rapporteur had used a very complex topic to promote concepts backed by a specific group of States, which should stop trying to impose their vision of the way to implement the 2030 Agenda. The report employed the pseudo-legal terms "environmental human rights" and "environmental human rights defenders" in clear breach of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In addition, it plainly advocated establishing a special regime for the protection of a specific group of human rights defenders or non-governmental organizations that would create an artificial hierarchy among defenders, in violation of the principle of equal treatment, particularly since the group in question was not a socially vulnerable group. It would be more appropriate to focus on creating a favourable environment for the work of all human rights defenders.

16. **Ms. Klopčič** (Slovenia) said that achieving universal respect for human rights hinged on effective human rights education at all levels. A clean, safe and sustainable environment was essential for the enjoyment of all human rights. She asked the Special Rapporteur what norms applied to non-State actors which had committed violations against human rights defenders and how the Guiding Principles on Business and Human Rights could best be used to protect human rights defenders. She would also appreciate further details on protection mechanisms for environmental rights defenders, particularly in relation to women defenders, indigenous peoples and marginalized communities.

17. **Mr. Oppenheimer** (Netherlands), stressing the importance of human rights defenders as agents of change and progress, said that his delegation shared the Special Rapporteur's concern about increasing violence against environmental rights defenders. Regarding his call for an international treaty to prevent and address human rights violations by transnational and national business enterprises, he asked what gaps in international law such a treaty might close. He would also appreciate additional examples of measures and best practices for States in developing protection mechanisms for environmental rights defenders, taking into account the intersectional dimensions of violations against women defenders, indigenous peoples and rural and marginalized communities.

18. **Ms. Ortega Gutierrez** (Spain) said that the structural causes at the root of the increasingly frequent conflicts involving environmental human rights and the exploitation of natural resources included the exclusion of environmental rights defenders and communities from the decision-making process for development plans and projects. Her country shared the Special Rapporteur's concern about the absence of independent investigations of acts of aggression against environmental human rights defenders, supported his call for zero tolerance and agreed with the need for mechanisms to empower and protect environmental rights defenders. It supported a preventive approach encompassing positive publicity for their work and effective application of the right to participation and consultation. It also advocated

capacity-building for defenders with a view to ensuring accountability and reparation. She asked what type of support the Special Rapporteur would give to transnational legal action and litigation.

19. **Ms. Moreira Costa Pittella** (Brazil) said that the Special Rapporteur's focus on the situation of environmental human rights defenders was timely and necessary. Brazil urged all States to institute or strengthen programmes to protect human rights defenders and to ratify the relevant international instruments, including the International Labour Organization's Indigenous and Tribal Peoples Convention. Brazil's national programme for the protection of human rights defenders, established in 2007, offered protection to 101 indigenous leaders.

20. Brazil took issue with the Special Rapporteur's recommendation that international financial institutions should integrate a human rights-based approach in their policies for fund allocation and management, as that would constitute an attempt to influence States' actions with regard to human rights defenders, which went beyond their mandates. It also rejected his recommendation that trade agreements involving countries where human rights defenders were under threat should include measures to prevent and address violations of their rights, since the net effect might be to promote protectionism rather than human rights. However, it supported the creation of protection mechanisms for human rights defenders to report threats, as well as the launch of initiatives to address the root causes of vulnerability to threats.

21. **Mr. Kelly** (Ireland), noting the key role of human rights defenders, said that Ireland was particularly troubled by instances of reprisals against human rights defenders who had cooperated with the United Nations human rights mechanisms, including the special procedures mandate holders. He welcomed the Special Rapporteur's reference to the Guidelines against Intimidation or Reprisals (the San José Guidelines) and would appreciate examples of policies and best practices for implementing them. He asked what the Special Rapporteur's key priorities were and what support the international community could provide to him.

22. **Mr. Forax** (Observer for the European Union) said that protecting environmental human rights defenders was crucial for the protection of the environment and the human rights that depended on it. He welcomed the Special Rapporteur's call to ensure the meaningful participation of environmental human rights defenders and affected communities in the implementation of the 2030 Agenda and to empower and protect defenders at the international, regional and national levels. He asked the Special Rapporteur to suggest measures and best practices to assist States in meeting their obligation to protect environmental human rights defenders. He also asked how the international community and other stakeholders could coordinate and enhance their efforts to protect human rights defenders.

23. **Ms. Lai** (Canada) said that, through the Community of Democracies' Working Group on Enabling and Protecting Civil Society, her country was continuing to challenge the adoption of unduly restrictive laws that affected the work of civil society, including human rights defenders, and as current Chair of the Voluntary Principles on Security and Human Rights Initiative, it was working with extractive companies to mitigate human rights risks related to the deployment of public or private security. Such efforts not only had positive implications for communities but also had a reputational benefit for companies and the host country. Much remained to be done to implement the Guiding Principles on Business and Human Rights.

24. Canada encouraged Member States to work constructively with the Assistant Secretary-General for Human Rights to ensure the active participation of civil society and human rights defenders at the United Nations without fear of reprisals. She asked the Special Rapporteur for examples of current norms, structures and models for protecting the rights of peaceful environmental defenders, as well as examples of multi-stakeholder engagement strategies for ensuring that all views were understood and the root causes of challenges and threats were tackled effectively.

25. **Ms. Brodská** (Czechia), noting that human rights defenders could not carry out their work without access to information; freedom of expression, peaceful assembly and association; and participation in decision-making, asked the Special Rapporteur for his recommendations on a human rights-based approach to implementing the 2030 Agenda.

26. **Ms. Duda-Plonka** (Poland) said that there was a clear need to create a culture of respect for human

rights. She asked the Special Rapporteur what further action the General Assembly and the Human Rights Council could take to prevent violations of the rights of human rights defenders.

27. **Ms. Charrier** (France) said that her country urged all States to protect human rights defenders and promote an environment conducive to their activities. It concurred with the Special Rapporteur on the need for protection mechanisms and for regional and international support, and it was working at the national level to protect the physical, psychological and digital security of defenders. Recalling that the Paris Agreement under the United Nations Framework Convention on Climate Change was the first international environmental accord that explicitly referred to human rights, she said that France would pay particular attention to ensuring the protection of environmental human rights defenders. She asked what steps could be taken to combat the increasing criminalization of the activities of human rights defenders.

28. **Mr. Rabi** (Morocco) said that his country welcomed the Special Rapporteur's focus on environmental human rights defenders, who often did not receive the protection afforded to other rights defenders. Indeed, there was a general reluctance to recognize environmental rights. Morocco had enshrined them in its 2011 Constitution with the same standing as other human rights and had established a national council for their protection. In the context of the preparations for the twenty-second session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Marrakesh in November 2016, it had recently hosted a colloquium on environmental law in Africa. He wondered how the international community could move from environmental protection to explicit recognition of environmental rights.

29. **Ms. Mballa Eyenga** (Cameroon), welcoming the Special Rapporteur's emphasis on environmental rights defenders, as one of the groups that should enjoy special protection, said that her delegation urged Member States and the international community to take all necessary steps to protect defenders of economic, social and cultural rights, including environmental rights and the right to development. In the context of the 2030 Agenda and the Paris Agreement on Climate Change, she asked what more could be done to realize those rights, which were generally subordinated to civil and political rights, and were not even recognized by some States.

30. **Mr. Forst** (Special Rapporteur on the situation of human rights defenders) said that the number of delegations which had spoken in support of his mandate showed real support for improving the protection of environmental human rights defenders. Contrary to some assertions, human rights defenders did not enjoy any special protections, and strengthening safeguards for them did not mean creating a special category for them but simply ensuring that they could exercise universal rights.

31. He welcomed the new mandate received by the Assistant Secretary-General for Human Rights to address reprisals, and said that he would continue to work with regional human rights organizations on that issue. He had been informed of many cases of human rights activists who had been threatened on return to their countries for having cooperated with the United Nations system.

32. Regarding business enterprises and human rights, he had been trying to ascertain what safeguards could be put in place for activists who were threatened by transnational business enterprises, particularly extractive companies. States needed to create an environment in which businesses played a much more active role, and attention must also be given to the role of subcontractors and the value chain. He would be collaborating with the Working Group on the issue of human rights and transnational corporations and other business enterprises to provide specific recommendations in the coming months. He planned to begin sending allegation letters to companies, not just States, and he would follow up on them with more insistent questions.

33. With respect to protection mechanisms, he urged States to adopt some of the practices recommended in his latest report to the Human Rights Council. He would probably devote one of his upcoming reports to following up on his predecessor's report on the situation of women human rights defenders. In closing, he urged States that had not responded to his request to visit to issue an invitation and told others that he would like to follow up on his predecessor's country visits.

34. **Mr. Kaye** (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), introducing his report (A/71/373), said that the report provided a broad and transparent overview of his work and was based on a survey of responses to the hundreds of communications, including allegations, urgent appeals and legislative comments, sent to Governments under his mandate. Unfortunately, Governments had responded less than half of the time, and few had responded substantively. As a result, he was often forced to raise concerns through public means, such as press releases, or through other mechanisms, such as amicus curiae filings. He had also adopted a new policy of publicly posting all commentaries on legislation and regulatory and policy proposals on the website of the Office of the United Nations High Commissioner for Human Rights.

35. A grim picture emerged from the information received. New forms of censorship in the digital age were combining with old tools to repress freedom of opinion and expression. In line with article 19 of the International Covenant on Civil and Political Rights, which required that any restriction on freedom of expression, but not of opinion, must be provided by law and be necessary and proportionate in order to protect a legitimate objective, a law must make clear what constituted unlawful behaviour. Yet laws often proscribed behaviour on vague grounds, and were adopted without allowing sufficient time for public scrutiny or providing for adequate independent review of claims of violations.

36. States were enacting disproportionate restrictions in order to undermine digital security and promote mass and targeted surveillance, disrupt Internet and telecommunications services and censor information that was in the public interest on the grounds of national security and public order. They were also adopting legislation that criminalized extremism without defining key terms and instituting broad restrictions on speech that did not amount to incitement under article 20 of the Covenant.

37. States were also imposing restrictions in pursuit of objectives not permitted by existing sources of international human rights law. Laws criminalizing criticism of the State were being used against ordinary citizens and journalists, and counterterrorism had become a catch-all motive for throttling freedom of expression in the media. Non-State actors had committed atrocities around the world on the basis of religious or ethnic affiliation or individual expression of belief, and some States criminalized speech that might wound religious feelings. Members of some groups faced discrimination in respect of their freedom of expression, such as laws that explicitly attacked that freedom on the basis of sexual orientation or gender identity.

38. He urged States to review and, where necessary, revise laws inconsistent with their obligations under international human rights law; to engage with special procedures to improve those laws and share examples of best practices; to support or establish regional or subregional monitoring and to support independent media and civic space. He also called on States to take all necessary measures to prevent acts of intimidation and reprisal against individuals who cooperated with United Nations mechanisms and to ensure accountability for such acts. He had been encouraged by the support of the Governments of Tajikistan and Japan for his 2016 missions and looked forward to similar support during his 2016 mission to Turkey.

39. **Mr. Dozler** (United States of America) said that global press freedom had declined to its lowest point in over a decade. People working in independent media were under constant pressure, whether physical or political, in many parts of the world. His country was particularly concerned about the rise in attacks on journalists; he asked for some examples of best practices that could assist States in providing better protection to journalists.

40. **Ms. Karimdoost** (Islamic Republic of Iran) said that freedom of opinion and expression should be exercised in accordance with articles 19 and 20 of the International Covenant on Civil and Political Rights and other relevant international instruments. She asked the Special Rapporteur how legal instruments could be used to prevent defamation of a religion under the veneer of freedom of opinion and expression.

41. **Ms. Vilde** (Latvia) said that her country was concerned about the continued deterioration of online rights. It was a strong advocate of free, independent and pluralistic media, which it was working to promote through the Baltic Centre for Media Excellence, established in Riga in 2015. She would be interested in the Special Rapporteur's observations on current trends

in critical thinking and media literacy around the world, the main challenges for promoting them and possible national and international strategies for that purpose. Digital technologies fostered democratic participation and allowed the independent voices of human rights defenders to be heard, but unlawful restrictions of freedom of expression continued to increase; she asked the Special Rapporteur to elaborate on possible measures for widening the civic space online. Her Government urged all States to engage with the special procedures and cooperate closely with them.

42. **Mr. Ríos Sánchez** (Mexico) said that Mexico had launched a series of constitutional and legislative reforms to bring the national legal framework for the protection of freedom of opinion and expression into line with the international treaties and had strengthened its institutions for protecting journalists and social communicators. His delegation applauded the Special Rapporteur's policy on transparency, which should be adopted by other special procedures and mandates, the Organization as a whole and Governments. He asked whether the Guiding Principles on Business and Human Rights were adequate in the digital age and, if not, how they could be improved.

43. **Mr. Mahidi** (Austria), referring to the increase in legislation that, under the label of counterterrorism, did not meet the requirements of the International Covenant on Civil and Political Rights, said that he would appreciate the Special Rapporteur's comments on how States could find the right balance between combating terrorism and respecting the right to freedom of expression and opinion and ensure that laws were precise and proportionate enough to protect freedom of expression yet broad enough to combat terrorism and extremism effectively.

44. **Ms. Savitri** (Indonesia) said that freedom of opinion and expression were guaranteed in her country's Constitution and laws. However, freedom of expression was not absolute, but entailed restrictions, as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It could not be used to infringe the rights of others, and must be coupled with tolerance and the rule of law. She asked the Special Rapporteur to elaborate on the issues of digital rights, integrity of digital communications and the role of intermediaries with regard to online rights.

45. **Mr. Al-Hussaini** (Iraq) said that freedom of expression was guaranteed under Iraq's 2005 Constitution and had been a cornerstone of Iraqi political life since 2003. However, terrorist groups were targeting freedom of expression in all of its manifestations. Civil society activists, writers, artists and journalists had been kidnapped and murdered, and a number of media workers had been killed while covering battles.

46. **Ms. Brodská** (Czechia) said that her delegation shared the concerns about the many trends working against freedom of opinion and expression. It was very important for measures to combat violent extremism to satisfy the necessity and proportionality criteria. She asked how States could be motivated to revise their laws and whether the Human Rights Council special procedures might be helpful in that respect.

47. **Mr. Forex** (Observer for the European Union) said that freedom of expression was a prerequisite for a functioning, democratically accountable society and an enabler for all human rights. The Special Rapporteur's report rightly focused on the necessity and proportionality tests for national laws and on the importance of freedom of expression online, which was deteriorating at the national level despite strong international commitments. The European Union strongly supported the principle that rights which existed offline must also be protected online, and welcomed Human Rights Council resolution 32/13 on the promotion, protection and enjoyment of human rights on the Internet (A/HRC/32/L.20), which unequivocally condemned measures to intentionally prevent or disrupt access or dissemination of information online. He asked the Special Rapporteur to share his ideas on translating international commitments into national action, including examples of best practice.

48. **Ms. Anichina** (Russian Federation) asked why the Special Rapporteur had disregarded article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination in his analysis of acceptable restrictions. It was incumbent on him to work on lifting all reservations to that article, most of which had been made by Western countries.

49. **Ms. Birštunaitė** (Lithuania) said that her country was firmly committed to the promotion and protection of freedom of opinion and expression both online and offline, including through the Freedom Online Coalition. It strongly supported the international commitments on the protection of journalists and other media workers, as well as the principle that rights existing offline must also be protected online. She would appreciate the Special Rapporteur's views on improving the implementation of current norms and guidelines on the protection of journalists, on which gaps in the existing normative framework most urgently needed to be addressed, and on how best to build support for tackling the existing climate of impunity for crimes against journalists and media workers. She also asked which instruments could best address the online intimidation of journalists, particularly women journalists.

50. **Ms. Węgrzynowska** (Poland) said that in some cases laws and policies against terrorism and other criminal activities undermined media freedom; independent journalists and activists often faced disproportionate restrictions, severe criminal charges or death threats for revealing information. Global efforts to improve protection of the freedom of opinion and of expression were a cornerstone of good governance, transparency and the rule of law. She requested examples of anti-terrorism laws whose restrictions met the requirements of proportionality, legality and necessity.

51. **Ms. Thomas Ramírez** (Cuba) said that in the Special Rapporteur's report there was an imbalance between actions to promote and protect the exercise of the right to freedom of opinion and of expression and action to ensure fulfilment of the attendant responsibilities, in line with article 19 of the Covenant. Her delegation would like the Special Rapporteur's opinion on how to ensure that journalists and others disseminating information through the broad information exchange platforms that were available adhered to ethical standards. Furthermore, when issuing opinions about the measures adopted by individual countries, it was important to verify the alleged circumstances in order to substantiate such opinions and ensure objectivity.

52. **Ms. Clayton** (United Kingdom) said that restrictions on freedom of opinion and expression were often based on flawed rationales and an absence of legal safeguards and sought to limit political discussion or stifle legitimate political opposition. Acts of aggression against journalists, bloggers and other commentators were frequently encouraged by a climate of impunity. She asked how support for independent media and civic space could best be provided. Her delegation underscored the agreed position that rights which existed offline must also be protected online and asked how the Special Rapporteur saw his role in ensuring the implementation of Human Rights Council resolution 32/13.

53. **Ms. Moreira Costa Pittella** (Brazil) said that surveillance, including both bulk collection of data and targeted attacks on specific individuals or communities, interfered directly with the right to privacy and to freedom of opinion and expression. Any surveillance activity must be based on a publicly accessible, clear, precise, comprehensive and non-discriminatory legal framework, as required by international law. In 2014, Brazil had adopted an Internet bill of rights that guaranteed the inviolability and privacy of online communications except as provided by court order. She asked the Special Rapporteur what criteria should be used to determine if a law authorizing enhanced surveillance or limiting Internet security met the necessity and proportionality requirements.

54. **Ms. Stener** (Norway) said that her delegation was concerned about the worrisome trends of enacting laws that undermined freedom of opinion and expression and misusing legislation to restrict the work of artists, journalists, bloggers and human rights defenders and thus prevent criticism, dissent and peaceful protest; those trends must be reversed. In January 2016, Norway had launched a strategy that placed the promotion and protection of freedom of expression at the heart of its foreign policy and development assistance and set out three thematic priorities: independent media, protection, and access to information. Her delegation agreed that it was important to make use of existing global and regional monitoring mechanisms and requested the Special Rapporteur's views on how best to support such mechanisms.

55. **Ms. Becker** (Denmark) asked the Special Rapporteur to suggest ways for State actors, private-

sector actors and enterprises, civil society organizations and individuals to cooperate more closely on ensuring respect for freedom of opinion and expression. She also asked for his views on how to strike the right balance between the rights to privacy and protection of personal data and the right to seek, receive and impart information containing such data.

56. **Ms. Taye Alemayehu** (Ethiopia) said that Ethiopia's Constitution and press law protected freedom of opinion and expression. While censorship was prohibited, writers could be prosecuted for inciting violence through the social media. The so-called Zone 9 bloggers had been detained on evidence of collaboration with an illegal terrorist group, and five had been released owing to insufficient evidence. Thus, contrary to the assertion in the report, her Government had not used its Criminal Code and the Anti-Terrorism Proclamation to detain bloggers and stifle dissent.

57. **Ms. Mballa Eyenga** (Cameroon) said that her country, which had many newspapers and radio and television stations, was firmly committed to freedom of opinion and expression. She asked what concrete measures had been or could be taken to prevent the use of the Internet and other means of communication by terrorist and criminal groups for criminal purposes such as online terrorist propaganda and recruitment.

58. **Mr. Kaye** (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) said that he was heartened by delegations' many references to article 19 of the International Covenant on Civil and Political Rights. With respect to the protection of journalists, it was important to ensure not only their physical security but also the security of their online communications and their sources. Regarding religion and freedom of expression, steps should be taken to reinvigorate Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief.

59. With respect to digital rights, in order to widen civic space, it was critical to avoid both mass and targeted surveillance insofar as possible and to allow individuals to use encryption and anonymity. On business and human rights, the Guiding Principles on Business and Human Rights provided guidance on transparency, due diligence, the human rights impact of private decisions and the availability of remedies. Regarding the complicated issue of freedom of expression and combating terrorism, the focus should be not on striking a balance but on demonstrating the necessity and proportionality of any restriction, in line with the standards set out in article 19 of the International Covenant on Civil and Political Rights. He did not have time to address the many other excellent questions, but would close by saying that the best way for States to support mechanisms and special procedures was to be as responsive as possible to communications, to extend invitations to visit and, if possible, to provide additional support, particularly financial support, to the Office of the United Nations High Commissioner for Human Rights, which was chronically under-resourced.

60. **Ms. Dandan** (Independent Expert on human rights and international solidarity) said that her most recent report to the Human Rights Council (A/HRC/32/43) had summarized five regional consultations held in 2015 and 2016 to obtain broad input on the proposed draft declaration on the right of peoples and individuals to international solidarity (A/HRC/26/34, annex). The discussions had yielded a wealth of views on a wide range of subjects, from which she had synthesized the four key issues analysed in her report to the General Assembly (A/71/280): the basis of the right to international solidarity in international law; the nature of the right to international solidarity; international solidarity and the extraterritorial obligations of States, and the role of non-State actors.

61. The framework for international solidarity derived from the Charter of the United Nations, the international human rights treaties and conventions and the many human rights and development-related commitments made at international conferences and summits and through General Assembly resolutions. General Assembly resolutions, although not legally binding, were considered part of the body of customary international law because of their acceptance by States.

When States adopted a resolution, they agreed on the principles contained in it and might turn them into standards, State practice and, ultimately, rules of international law. The same procedure could be applied to developing the right to international solidarity as an enabling right for the promotion and protection of human rights in general.

62. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights clarified the parameters of extraterritorial obligations of States and confirmed the primacy of human rights among competing sources of international law. International cooperation, as a duty of States, had a significant bearing on the proposed draft declaration. During the regional consultations, a number of participants had argued that international solidarity should encompass civil and political rights, since States' policies and actions could have a negative extraterritorial impact on those rights, thereby extending their responsibility to individuals and groups beyond their borders. In addition, the Rio Declaration on Environment and Development requested States to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

63. Although the term "non-State actors" could sometimes refer to armed and terrorist groups, the Cotonou Agreement defined them as the private-sector; economic and social partners, including trade union organizations, and civil society and stipulated that recognition of non-governmental actors depended on the extent to which they addressed the needs of the population, on their specific competencies and whether they were organized and managed democratically and transparently.

64. International solidarity in relation to transnational business operations was closely linked to corporate social responsibility. There were conflicting opinions as to whether some enterprises in particular situations had a responsibility to go beyond respect for human rights and seek to promote them. It was worth exploring to what extent businesses might have a responsibility to give back to their customers and the communities where they operated, and to play a positive role in promoting sustainable global development.

65. It had often been said that international solidarity did not meet the requirements of a legal concept, much less a human right. In her report, she stressed the well-recognized premise that for a right to be claimable, it must have identifiable rights holders and duty bearers. The obligations of States identified in the proposed draft declaration already existed in the relevant general comments and recommendations of the various human rights treaty bodies. In her view, the right to international solidarity was a claimable right by virtue of that interface with existing international human rights law.

66. The International Covenant on Economic, Social and Cultural Rights had once been considered as a vaguely worded instrument, with no indication as to how those rights should be enforced. States had ratified it anyway, and after the Committee on Economic, Social and Cultural Rights had been established, they had started submitting their initial reports to it. From their reports and the ensuing dialogues with Committee members, it had been apparent that they had decided on their own how to implement the provisions of the Covenant. In due course, the Committee had begun its work of interpreting the Covenant through the issuance of general comments. That process illustrated how human rights could acquire claimability only through the continuous work of legal and political institutions and human rights mechanisms.

67. She hoped that the General Assembly would endorse the proposed final draft declaration, which she would be presenting to the Human Rights Council in July 2017. As she was addressing the Committee for the last time, she thanked it for its support and generosity of spirit.

68. **Ms. Thomas Ramírez** (Cuba) said that her country was grateful to the Independent Expert for the impetus that she had given to her mandate. She asked what could be done to overcome some States' reluctance to recognize the right to international solidarity and build support for the draft declaration. She also asked the Independent Expert whether she thought that enforcement mechanisms should be defined, as proposed during the regional consultations.

69. **Ms. Mouflih** (Morocco), thanking the Independent Expert for her report and her visit to Morocco, said that her delegation agreed on the importance of South-South cooperation, as a

manifestation of solidarity based on common experiences and shared goals. Morocco's foreign policy emphasized international and humanitarian solidarity, and it was working to promote South-South and triangular cooperation as well as regional and subregional partnerships. She asked the Independent Expert for more information about the regional consultations on the proposed draft declaration.

70. **Ms. Dandan** (Independent Expert on human rights and international solidarity) said that the regional consultations were described in her previous report to the Human Rights Council. She had come away from the five regional consultations with an even firmer conviction of the feasibility and enforceability of the right to international solidarity. It had become apparent that many of the participating States already had working mechanisms for implementing the right and that it could be implemented in culturally diverse ways. At the end of the day, it was up to the States to work out any objections. Human rights would always be a work in progress that could come into existence as enforceable claims only through continuous development of their myriad dimensions, through the work of local actors and that of the entire United Nations system.

The meeting rose at 5.35 p.m.